



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2014-0123; FRL-9922-71-Region 5]

**Approval and Promulgation of Air Quality Implementation Plans;
Illinois; Amendments to Gasoline Vapor Recovery Requirements for
Illinois**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the Illinois Environmental Protection Agency (IEPA) on January 17, 2014, concerning the state's gasoline vapor recovery requirements. The revision phases out the Stage II vapor recovery (Stage II) program requirements in the Illinois portion of the Chicago ozone nonattainment area (NAA) as a component of the Illinois ozone SIP. To be consistent with the repeal of the Stage II program requirements, the SIP revision also includes amendments to the state's permitting regulations applicable to storage tanks and fuel dispensing, including repealing the Stage I vapor recovery (Stage I) registration provisions due to overlapping Federal notification requirements and state tracking

systems for gasoline dispensing operations. Finally, the SIP revision includes other clarifying and clean-up amendments at 35 Ill. Adm. Code Parts 201, 218, and 219. The submittal also includes a demonstration under section 110(l) of the Clean Air Act (CAA) that shows there are no emissions impacts associated with the removal of the program. A proposed rule approving IEPA's submittal was published in the Federal Register on October 17, 2014.

DATES: This final rule is effective on **[insert date 30 days after publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2014-0123. All documents in the docket are listed in the www.regulations.gov web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that

you telephone Francisco J. Acevedo, Mobile Source Program Manager, at (312) 886-6061, before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Francisco J. Acevedo, Mobile Source Program Manager, Control Strategies Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6061, acevedo.francisco@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What is being addressed by this document?
- II. What is our response to comments received on the notice of proposed rulemaking?
- III. What action is EPA taking?
- IV. Statutory and Executive Order Reviews.

I. What is being addressed by this document?

On October 17, 2014, EPA published proposed (79 FR 62378) and direct final (79 FR 62352) rules approving revisions to the Illinois ozone SIP submitted on January 17, 2014, concerning the State's Stage II vapor recovery program requirements in Illinois. The rules also included amendments to 35 Ill. Adm. Code Parts 201, 218, and 219 to make necessary updates and to be consistent with the repeal of the Stage II program standards. A full list of the regulatory changes submitted by Illinois for

EPA approval included:

- Revisions to 35 Ill. Adm. Code 201.146 and 201.302 adopted at 38 Ill. Reg. 1005, effective December 23, 2013.
- Revisions to 35 Ill. Adm. Code 218.112, 218.583, and 218.586 adopted at 38 Ill. Reg. 1032, effective December 23, 2013.
- Revisions to 35 Ill. Adm. Code 219.105, 219.112, and 218.583 adopted at 38 Ill. Reg. 1061, effective December 23, 2013.

EPA subsequently received adverse comments on the direct final rule and withdrew it on December 10, 2014 (79 FR 73202). The proposal was not withdrawn and remained in effect. In this action we are responding to the comments and taking final action to approve Illinois' SIP revision request submitted on January 17, 2004.

II. What is our response to comments received on the notice of proposed rulemaking?

EPA only received one adverse comment on the October 17, 2014, proposed approval of this Illinois rule. We are responding to the commenter who disagreed with our action.

Comment. The commenter notes that the CAA section 110(1) demonstration submitted by Illinois is flawed and the commenter claims that there are in fact significant emission reduction

losses resulting from the removal of the Stage II program requirements in Illinois. The commenter further claims that the increased emissions represent a significant environmental, health and safety risk.

Response.

The commenter's primary argument that Illinois' 110(l) demonstration is "flawed" is not directly supported in the comments submitted to EPA. The commenter does not provide any specific information outlining how or why he believes the state's 110(l) demonstration is unsound, or how approving the state's action would represent a significant environmental, health and safety risk. The state's SIP submittal, on the other hand, included an extensive analysis using state specific data demonstrating that beginning in 2014, on-board refueling vapor recovery (ORVR) systems alone would start providing greater reductions in refueling emissions than the simultaneous use of ORVR and Stage II in the Chicago ozone NAA. The commenter submitted only general calculations deriving the increase in refueling emissions, but the methodology and data used for calculating the stated emissions impacts are unexplained and appear to be based on incomplete assumptions that on their own are not acceptable for SIP demonstration purposes as they do not use state specific information, including vehicle miles traveled, fuel Reid vapor pressure, meteorological data, and

vehicle population. Further, the commenter's calculations do not take into consideration the incompatibility issue between some Stage II systems and ORVR systems that is being addressed through the state's Stage II decommissioning process. EPA has provided guidance to states on how the compatibility factor should be incorporated into SIP revisions for Stage II programs. Specifically, EPA issued guidance including a document entitled "Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures," EPA457/B-12-001 (August 7, 2012). IEPA's calculations are consistent with EPA guidance and take the compatibility factor into account. After considering the commenter's concerns and re-examining Illinois' SIP submittal, including the state's responses to similar issues raised by the commenter during the state's rule development process, EPA continues to find that IEPA's modeling demonstration supports phasing out the state's Stage II vapor recovery systems and complies with the CAA section 110(l) "anti-backsliding" provisions.

III. What action is EPA taking?

EPA is approving the revisions to the Illinois ozone SIP submitted on January 17, 2014, concerning the State's Stage II vapor recovery program standards in Illinois. EPA is also approving amendments to 35 Ill. Adm. Code Parts 201, 218, and

219 to make necessary updates and to be consistent with the repeal of the Stage II program standards. EPA finds that the revisions will not interfere with any applicable requirement concerning attainment, reasonable further progress or any other applicable CAA requirement.

IV. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a

substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those

areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication of this document in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it

extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Oxides of nitrogen, Ozone, Volatile organic compounds.

Dated: January 30, 2015.

Bharat Mathur,
Acting Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52--APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 52.720 is amended by adding paragraph (c)(203) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(203) On January 17, 2013, the Illinois Environmental Protection Agency submitted a request to phase out Stage II vapor recovery standards at 35 Ill. Adm. Code 218.586 and to make other related revisions to 35 Ill. Adm. Code Parts 201, 218, and 219.

(i) *Incorporation by reference.*

(A) Illinois Administrative Code, Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board, Subchapter a: Permits and General Provisions, Part 201, Permits and General Provisions, Subpart C: Prohibitions, Section 201.146, Exemptions from State Permit Requirements, and Subpart K: Records and Reports, Section 201.302, Reports, effective December 23, 2013.

(B) Illinois Administrative Code, Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution

Control Board, Subchapter c: Emission Standards and Limitations for Stationary Sources, Part 218, Organic Material Emission Standards and Limitations for the Chicago Area, Subpart A: General Provisions, Section 218.112, Incorporations by Reference, Subpart Y: Gasoline Distribution, Section 218.583, Gasoline Dispensing Operations - Storage Tank Filling Operations and Section 218.586, Gasoline Dispensing Operations - Motor Vehicle Fueling Operations, effective December 23, 2013.

(C) Illinois Administrative Code, Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board, Subchapter c: Emission Standards and Limitations for Stationary Sources, Part 219, Organic Material Emission Standards and Limitations for the Metro East Area, Subpart A: General Provisions, Section 219.105, Test Methods and Procedures, and Section 219.112, Incorporations by Reference, Subpart Y: Gasoline Distribution, Section 219.583, Gasoline Dispensing Operations - Storage Tank Filling Operations, effective December 23, 2013.

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